

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
PETERSON CONTRACTORS, INC.	NO. 2007-AQ- 21 NO. 2007-SW- 11
Pottawattamie County, Iowa	

TO: Peterson Contractors, Inc.
Cordell Peterson, Registered Agent
104 Black Hawk
Reinbeck, IA 50669

Peterson Contractors, Inc.
Attn: James Peterson, Director
P.O. Box A
Reinbeck, IA 50669

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Peterson Contractors, Inc. (PCI) for the purpose of resolving asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) and improper disposal of solid waste violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Matt Rhodes, Environmental Specialist
DNR Field Office 4
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the director to issue any order necessary to secure compliance with or prevent a

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violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. PCI is an Iowa corporation founded in 1964 which employs between 50-350 construction staff depending on the season. PCI specializes in heavy and highway construction performing services such as heavy earthwork, site work, bridges, retaining walls, demolition, raw and recycled material processing, and specialty construction services. PCI was responsible for the demolition and disposal of the demolition wastes from a drive-in theater in Council Bluff, Iowa. Waste from this demolition was deposited at property belonging to Frank Sollazzo (Sollazzo site) which is located in Section 14, T75N, R42W, Pottawattamie County, and locally known as 20394 Husker Lane, Council Bluffs, Iowa.

2. On April 26, 2007, DNR Field Office 4 received a complaint alleging that petroleum contaminated soil (PCS) was being improperly disposed of at the Sollazzo site. Thad Nanfito of DNR Field Office 4 conducted a preliminary investigation of the site. During the investigation, Mr. Nanfito observed construction and demolition waste and PCS at the site. Mr. Sollazzo stated that he allowed Dennis Collins of D&D Construction (D&D) to haul dirt and trees to the ditch behind his residence and to deposit material on the site. During the investigation, Mr. Sollazzo called Mr. Collins who stated, according to Mr. Sollazzo, that some waste which should have gone to a landfill was mistakenly brought to the Sollazzo site.

3. On May 4, 2007, DNR Field Office 4 personnel received a phone call from Mr. Collins of D&D. Mr. Collins stated that they would remove all of the wood waste from the site and dispose of it at the Anderson Excavating Landfill in Council Bluffs. He further stated that the waste materials at the Sollazzo site had come from the former drive-in theater in Council Bluffs. DNR personnel explained there were concerns that asbestos containing material was present in the waste at the Sollazzo site. Mr. Collins stated that asbestos testing had been completed as part of the demolition project.

4. On May 23, 2007, Keith Wilken, DNR Field Office 4 and Tom Wuehr, DNR Air Quality conducted a follow-up inspection at the Sollazzo site. During the inspection samples of suspected asbestos containing material were collected for analysis. Upon receipt of the laboratory results it was confirmed that regulated quantities of asbestos containing material were present in the construction and demolition waste found at the Sollazzo site.

5. On June 8, 2007, DNR Field Office 4 personnel contacted D&D and informed Mr. Collins not to remove any of the waste materials from the site until DNR decided how to proceed. During the call, Mr. Collins informed DNR that Council Bluffs Industrial Foundation owned the former drive-in theater where the waste had originated and that PCI was responsible for the demolition project.

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6. On June 14, 2007, DNR Field Office 4 personnel contacted D&D. Mr. Collins stated that PCI did the demolition work and D&D only hauled the waste materials to the site. D&D also faxed a letter from Terracon, a consulting and engineering group, regarding the asbestos abatement at the drive-in theater. The letter stated that no further asbestos containing material remained in the drive-in theater structures.

7. On June 15, 2007, DNR Field Office 4 personnel conducted another inspection of the Sollazzo site at the request of PCI. The purpose of the visit was to discuss the abatement and disposal of the waste materials from the site. Mr. Fleshner, PCI Project Manager, stated that he would discuss the issues with Mr. Sollazzo and then develop a plan to remedy the situation.

8. On June 22, 2007, DNR issued a Notice of Violation letter to the four parties involved with the improper disposal of solid waste at the Sollazzo site: Frank Sollazzo, D&D, Council Bluffs Industrial Foundation, and PCI. The letter required that the parties submit a plan of action (POA) regarding the cleanup and disposal of waste material. On July 6, 2007, PCI submitted a POA to DNR regarding the asbestos abatement and removal of the solid waste items from the Sollazzo site.

9. On or around August 21, 2007, PCI contacted Matt Rhodes at DNR Field Office 4 that the cleanup of the surface material had been completed. PCI stated that approximately 400 tons of debris (all as asbestos containing material) was taken to a landfill in David City, Nebraska.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission to establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESHAP, found at 40 CFR part 61, subpart M.

2. 40 CFR 61.150(b)(1) requires that all asbestos containing waste material be deposited as soon as is practical by the waste generator at a waste disposal site operated in accordance with 40 CFR 61.154 for active waste disposal sites. The asbestos containing waste from the demolition was not disposed of at an acceptable disposal site. The above facts indicate noncompliance with this provision.

3. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-121.

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4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. PCI was in charge of the demolition of the Council Bluffs drive-in theater. The waste from the drive-in was improperly disposed of at the Sollazzo site. The above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, the DNR orders and PCI agrees to do the following:

1. PCI shall comply with all applicable asbestos and solid waste rules in the future and;
2. PCI shall pay a penalty of \$3,100.00 within 60 days of the date from which the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,100.00. The administrative penalty is determined as follows:

Economic Benefit – Due to the high cleanup costs, PCI received only minimal economic benefit from this violation. Based on the above considerations, \$100.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has determined at this time the most equitable and efficient means of resolving the matter is through an administrative consent order. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to properly dispose of solid waste and properly abate asbestos contaminated materials threatens the integrity of the regulatory program. Tax dollars were expended to investigate, document, and respond to this

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violation. Improper solid waste disposal as well as failure to properly abate asbestos contaminated waste can degrade water quality and contribute contaminants to both land and water resources as well as threaten the public health. Based on the above considerations, \$2,000.00 is assessed for this factor.

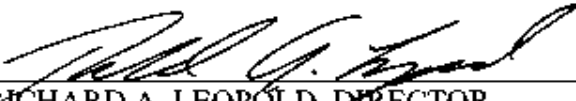
Culpability – PCI has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. PCI is aware of the solid waste and asbestos regulations. Based on the above considerations, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of PCI. For that reason PCI waives its rights to appeal this administrative consent order or any part thereof.


VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 30 day of
October, 2007.



For Peterson Contractors, Inc.

Dated this 18th day of
October, 2007.

Barb Stock (Con 10-6 Pottawattamie County); Kelli Book; Field Office 4; Dan Stipe; VI.D., VII.C.1, and VII.C.4